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W.A.No.3172 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2024

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR. JUSTICE P.B.BALAJI

W.A.No.3172 of 2024

S.Anbalagan

... Appellant

Vs.

1. The Senior Deputy Manager,
Metropolitan Transport Corporation,
Anna Salai, Pallavan Illam,
Chennai 600 002.

2. The Administrator,
Tamil Nadu State Transport Corporation,
Employees Pension Fund, Pallavan Salai,
Chennai 600 002.

... Respondents

PRAYER: The Writ Appeal is filed under Clause 15 of the Letters Patent to set aside the order of this Court dated 26.03.2024 made in W.P.No.8311 of 2024.

For Appellant : Mr.S.T.Varadarajalu

JUDGMENT



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(Judgment of the Court was delivered by **D. KRISHNAKUMAR, J.**)

Assailing the order passed by the learned Single Judge in W.P.No.8311 of 2024 dated 26.03.2024, the writ petitioner has filed the present writ appeal.

2. The appellant has filed the above writ petition to quash the letter dated 08.08.2023 issued by the first respondent, denying his prayer to revise the pension benefits and to settle leave salary, festival holiday salary, Bonus and Ex-gratia for the non employment period from 04.12.1991 to 11.04.2013 and consequently, direct the respondents concerned to pay the above benefits.

3. The Writ court, by considering the facts that the petitioner was dismissed from service from 04.12.1991 to 11.04.2013; and only after the award passed by the lok adalat, he was reinstated into service, that too without any backwages; and he was reinstated into service with continuity of service alone, has dismissed the writ petition, since those benefits will be given to the employees, who are in service. Dissatisfied with the above order, the writ petitioner is before this court.



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4. Heard the counsel for the appellant and we have gone through the materials on record.

5. Admittedly, the appellant was dismissed from service on 04.12.1991 for his misconduct and as per the Award passed in Industrial Dispute No.633/1996 by the Labour Court, Chennai dated 05.09.2002, the respondent management was directed to reinstate the appellant into service with 50% backwages with continuity of service.

In the first round of litigation:

ii) As against the award passed by the Labour Court dated 05.09.2002, the management filed W.P.No.22280/2003; and the appellant has also filed W.P.No.49749 of 2006, challenging the denial of remaining 50% backwages.

iii) By order dated 26.11.2010, W.P.No.22280/2003 filed by the management was allowed and W.P.No.49749/2006 filed by the appellant was dismissed.

iv) As against the dismissal of W.P.No.49749 of 2006, the appellant preferred an appeal in W.A.No.374 of 2011. Pending appeal, the matter was referred to Lok Adalat, wherein, the appellant agreed to



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forego 50% of backwages, as granted by the Labour court and to that extent, the Award was modified by the Lok Adalat by order dated 05.12.2012 and granted the continuity of service and other attendant benefits were confirmed.

6. According to the appellant, as per the order of the Lok Adalat dated 05.12.2012, he was granted continuity of service and other attendant benefits and hence, he sent representations to the management to revise his pension taking note of the review benefits, however, it was denied by the management.

Accordingly, in the second round of litigation:

i) the appellant filed W.P.No.22166 of 2015 seeking direction to the respondent management to pay pension to the appellant after taking note of the service benefits in the Award dated 05.09.2022 passed in I.D.No.633 of 1996. By order dated 03.03.2016, this court has directed the respondent corporation to compute the appellant's total length of service from 23.06.1982 onwards and calculate his pension, after ascertaining the amount in accordance with the relevant rules and after deducting the petitioner's contribution, and pay the same to him.



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ii) The above said order dated 03.03.2016 made in W.P.No.22166 of 2015 was challenged by the Management in W.A.No.1145 of 2016. The said appeal was disposed of on 18.09.2017 with some clarification and it is reproduced as follows.

3. On the other hand, learned counsel for the respondent (appellant herein), relying upon the Joint Memorandum of settlement entered into before the Lok Adalat on 7.4.2017 in W.P.Nos.25405 of 2016 and 14524 of 2014 between the same appellant-Management and one Mr.K.Balaraman, submitted that in a similar case, when the management had agreed to pay pension to the concerned workman by making the employer's provident fund contribution, in lieu of entire back-wages for the non employment period, they cannot deny the same benefit to the respondent, after deducting the contribution to be made by him, for the purpose of pension.

4. Having heard the learned counsel for the parties, we hereby clarify that it is for the appellant-Management to calculate the pension payable to the respondent/writ petitioner (appellant herein) by taking into account the employee's Provident Fund contribution, covering the length of service, which amount shall carry interest, as per the Tamil Nadu State Transport Corporation Employees Pension Fund Scheme; and on quantification of the entire arrears of pension, the amount of contribution to be made by the respondent/writ petitioner (appellant herein) shall be deducted/adjusted and the balance amount thereof shall be paid to him, so that there may be regular payment of monthly pension in favour of him. Such an exercise shall be completed within a period



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of two months from the date of receipt of a copy of this order.

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7. It is to be noted that, the said order passed in W.A.No. 1145/2016, dated 18.09.2017 was not challenged by the appellant, whereas, he filed contempt petition No.970/2018 to sanction pension, as per the order passed in W.A.No.1145 of 2016. According to the appellant, pending contempt petition, the respondent had sanctioned pension in May 2018 and hence the contempt petition was closed.

8. It is the case of the appellant that, though pension was sanctioned, he was not granted review benefits as per Section 12(3) settlement and hence he filed yet another writ petition in W.P.No.144/2020 to revise his pension, as per settlement in vogue and also to pay leave salary, holiday salary, bonus and Ex-gratia for non employment period from 4.12.1991 to 11.04.2013. In the said W.P.No.144/2020, by order dated 19.01.2023, this court has directed the management to consider the representation of the appellant in accordance with the settlement arrived at under Section 12(3) of the Industrial Dispute Act Settlement dated 31.01.2011 and to pass orders.



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9. It is also the case of the appellant that since the management has not granted the review benefits, as per the settlement in vogue, he is getting lessor pension than his junior; hence he gave a representation to the management and it was rejected by the respondent, vide impugned order dated 08.08.2023. Challenging the said order, he filed the writ petition in W.P.No.8311 of 2024 and following its dismissal order, he filed the present writ appeal.

10. The respondent management, while passing the impugned order dated 08.08.2023 has discussed about the granting of review benefits in detail and has given reasons for not granting the said benefits to the appellant and the same is extracted here under.

நீதிப்பேராணை எண்.144/2020ன் உத்தரவுப்படி தங்களின் 28.02.2023 நாளிட்ட மனு நன்கு பரிசீலிக்கப்பட்டு கீழ்க்கண்ட விவரங்கள் தெரிவித்துக் கொள்ளப்படுகிறது.

தாங்கள் பணிநீக்கம் செய்யப்பட்ட 04.12.1991 முதல் 11.04.2013 வரையுள்ள வேலை நீக்க காலத்திற்குண்டான ரெவ்யூ (Review) பலன்களை கணக்கீடு செய்து அதன் அடிப்படையில் தங்களின் அடிப்படை சம்பளத்தை மாற்றி அமைத்து அதற்குண்டான நிலுவைத் தொகையையும் அளிக்குமாறு கோரியுள்ளீர்.



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ஆனால், ஆய்வு பலன் (Review) என்பது பணியாளர் வருகைப் பதிவு, பணித்திறன், ஒழுங்கு நடவடிக்கை நிலுவையில் லாதிருத்தால் மற்றும் பணியாளரின் நன்னடத்தை போன்றவற்றை ஆராய்ந்து ஆய்வு பலன் கமிட்டியின் பரிந்துரையின் பேரில் வழங்கப்படுவது நடைமுறையில் உள்ளது. ஆனால் தாங்கள் 04.12.1991 முதல் 11.04.2013 வரை இடைப்பட்ட காலத்தில் நிரந்தர பணிநீக்கம் செய்யப்பட்டு பணிபுரியாத நாட்களாக இருப்பதினால் ஆய்வு பலன் (Review) வழங்க வழிவகை இல்லை என்றும் மேலும் மேற்கூறிய பணிநீக்க நாட்களுக்கு உண்டான ஈடுசெய்யும் விடுப்பு (E.L.), பண்டிகை விடுப்பு (FH), போனஸ் (Bonus), கருணைத் தொகை, பொங்கல் போனஸ் பேட்டா போன்றவைகள் அனைத்தும் ஒரு பணியாளரின் வருகைப் பதிவை பணிபுரிந்தமையை அடிப்படையாகக் கொண்டு அரசின் வழிகாட்டுதல்படி வழங்கப்படுவதாகும். எனவே, 04.12.1991 முதல் 11.04.2013 வரை தாங்கள் பணியில் பணிபுரியாத காலமானதால் தங்களுக்கு மேற்கூறியவைகளை வழங்க வழிவகை இல்லை என்பது தெரிவித்துக் கொள்ளப்படுகிறது.

மேற்கூறியவைகளின் அடிப்படையில் மாண்புமிகு சென்னை உயர்நீதிமன்ற நீதிப்பேராணை எண்.144/2020ன் உத்தரவு நிறைவேற்றப்பட்டது என்பது தெரிவித்துக்கொள்ளப்படுகிறது.

11. It is to be noted that, in the earlier W.A.No.1145 of 2016, it was specifically clarified that, the management has to calculation the pension payable to the appellant by taking into account the employer's provident fund contribution, covering the length of service and on



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quantification of the entire arrears of pension, the contribution amount to be made by the appellant shall be deducted. In fact, the appellant has not filed any appeal as against this order, but filed contempt petition to grant pension as per the said order passed in the writ appeal. Further, in the said appeal the appellant has not sought any liberty to file writ petition in future, if necessary. Hence, the above said order passed in W.A.No.1145 of 2016 has become final. However, subsequently, the appellant has sought review benefits, as per the settlement in vogue and filed W.P.No.144/2020, wherein, this court, by order dated 19.01.2023, has directed the management to consider the representation of appellant. The respondent management, after considering all the aspects and also as per the direction of this court in W.P.No.144/2020, has passed the reasoning order, dated 08.08.2023, rejecting the claim made by the appellant. Since there is no error in the said impugned order, the writ court has rightly dismissed the writ petition by observing that the review benefits such as earned leave, bonus, exgratia and pongal bonus will be given to the employees, who are in service alone. In such circumstances, we find no reason to interfere with the order passed by the learned Single Judge.



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12. Accordingly, this writ appeal is dismissed. There shall be no order as to costs.

(D.K.K, J.) (P.B.B., J.)

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D.KRISHNAKUMAR, J.
and
P.B.BALAJI, J.

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